BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

SLEEPING TIGER, LLC, Petitioner, v. CITY OF TUKWILA, Respondent.	**CASE NO. 10-3-0008** ***(SLEEPING TIGER)*** **FINAL DECISION AND ORDER**

SYNOPSIS

Reviewing a challenge to siting crisis diversion facilities, the Board found that the City of Tukwila's adoption of restrictive zoning was inconsistent with its comprehensive plan provisions for identifying and siting essential public facilities and precluded siting the facilities. The City's action did not comply with RCW 36.70A.200 and was not guided by GMA Goal 7. The Board entered a determination of invalidity.

I. PROCEDURAL BACKGROUND

City of Tukwila Ordinance No. 2287 adopted a zoning designation where crisis diversion facilities and crisis interim diversion facilities may be sited subject to an unclassified use permit. The City's action was challenged by Sleeping Tiger, LLC, the operator of a hotel facility selected by Downtown Emergency Service Center (DESC) as a potential site for crisis diversion services under a King County program. Sleeping Tiger's facility, called RiverSide Residences, is not located in the zone designated in Ordinance 2287.

On November 18, 2010, the Board convened the Hearing on the Merits (HOM) at Tukwila City Hall. Present for the Board were Board members Margaret Pageler, Dave Earling, and Nina Carter, with Board staff attorney Julie Taylor. Sleeping Tiger appeared *pro se* by

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William Summers, one of its principals, accompanied by Allison Summers. The City of Tukwila was represented by its City Attorney Shelley Kerslake, accompanied by City Planner Brandon Miles. Sue Garcia provided court reporting services.

The hearing provided the Board an opportunity to ask questions clarifying important facts in the case and providing better understanding of the legal arguments of the parties.

II. JURISDICTION AND STANDARD OF REVIEW

A. BOARD JURISDICTION

The Board finds that the Petition for Review was timely filed, pursuant to RCW 36.70A.290(2). The Board finds that Petitioner has standing to appear before the Board, pursuant to RCW 36.70A.280(2). The Board finds that it has jurisdiction over the subject matter of the petition pursuant to RCW 36.70A.280(1).

B. STANDARD OF REVIEW

The Growth Management Boards are tasked by the legislature with determining compliance with the GMA. The Supreme Court explained in *Lewis County v. Western Washington Growth Management Hearings Board:*[1]

> The Board is empowered to determine whether [city] decisions comply with GMA requirements, to remand noncompliant ordinances to [the city], and even to invalidate part or all of a comprehensive plan or development regulation until it is brought into compliance.

The scope of the Board's review is limited to determining whether a jurisdiction has achieved compliance with the GMA only with respect to those issues presented in a timely petition for review.[2]

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[1] 157 Wn.2d 488 at 498, fn. 7, 139 P.3d 1096 (2006).
[2] RCW 36.70A.290(1).

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The GMA creates a high threshold for challengers. A jurisdiction's GMA enactment is presumed valid upon adoption.[3] "The burden is on the petitioner to demonstrate that [the challenged action] is not in compliance with the requirements of [the GMA]."[4]

In *Swinomish Indian Tribal Community, et al. v Western Washington Growth Management Hearings Board*,[5] the Supreme Court summarized the Board's standard of review:

> The Board is charged with determining compliance with the GMA and, when necessary, invalidating noncomplying comprehensive plans and development regulations. The Board "shall find compliance unless it determines that the action by the state agency, county or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." RCW 36.70A.320(3). An action is "clearly erroneous" if the Board is "left with the firm and definite conviction that a mistake has been committed." "Comprehensive plans and development regulations [under the GMA] are presumed valid upon adoption." RCW 36.70A.320(1). Although RCW 36.70A.3201 requires the Board to give deference to a [jurisdiction], the [jurisdiction's] actions must be consistent with the goals and requirements of the GMA.

As to the degree of deference to be granted under the clearly erroneous standard, the *Swinomish* Court stated:[6]

> The amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give the [jurisdiction's] actions a "critical review" and is a "more intense standard of review" than the arbitrary and capricious standard.

"A board's order must be supported by substantial evidence," and the evidence must be of sufficient quantity "to persuade a fair-minded person of the truth or correctness of the order." *Thurston County v Western Washington Growth Management Hearings Board*.[7] Thus, in the recent Court of Appeals decision in *Suquamish Tribe et al v Central Puget Sound Growth*

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[3] RCW 36.70A.320(1).
[4] RCW 36.70A.320(2).
[5] 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007) (internal case citations omitted).
[6] 161 Wn.2d at 435, fn. 8 (internal citations omitted).
[7] 164 Wn.2d 329, 341, 190 P.3d 38 (2008)

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Management Hearings Board,[8] the Division II Court of Appeals admonished the Board for deferring to the county on issues that were not supported by substantial evidence in the record.

III. PRELIMINARY MATTERS

At the outset of the hearing the Presiding Officer questioned Petitioner about the source of various photographs attached as Exhibits 1, 11 and 12 to Petitioner's Prehearing Brief.[9] The Presiding Officer requested, and Petitioner subsequently provided, an affidavit authenticating the photographs.[10]

The Presiding Officer questioned the City about Exhibit 8 to the City's Prehearing Brief – a memorandum of Amnon Shoenfeld[11] dated 8/24/2010. The City identified this document as a report prepared subsequent to the enactment of the challenged ordinance but submitted to demonstrate that DESC has chosen a site in Seattle for its crisis diversion facility application. The Presiding Officer ruled that Exhibit 8 lacked authentication and would not be allowed. The Board submitted for the record certain pleadings and orders in prior related Board proceedings and designated these Hearing on the Merits Exhibit 1.[12] These documents are authenticated by stipulation of the City, by attorney attestation, or by Board order. There was no objection to these materials. HOM Exhibit 1 demonstrates that DESC chose a site in Seattle for its crisis diversion facility.

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[8] 145 Wn.App.743 (July 7, 2010)

[9] Enlargements of these photographs were brought to the hearing as illustrative exhibits.

[10] Declaration of William C. Summers, Nov. 24, 2010.

[11] Amnon Shoenfeld is identified in Petitioner's Ex. 5 (Sep. 2, 2008) as Director of King County Mental Health, Chemical Abuse and Dependency Services.

[12] *Downtown Emergency Service Center v City of Tukwila*, Case No. 9-3-0014 *(DESC I)* coordinated with Case No. 10-3-0006 *(DESC II)*:

- Order of Dismissal, July 16, 2010;
- Motion for Voluntary Dismissal, July 14, 2010;
- Order Granting Fifth Settlement Extension and Amending Case Schedule, June 24, 2010;
- Fifth Request for Settlement Extension, June 24, 2010;
- Order in Response to DESC Status Report and Request for Settlement Extension, May 25, 2010;
- Settlement Status Report and Third Request for Settlement Extension, May 24, 2010.

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During the Hearing, the City provided copies of Comprehensive Plan Goal 15.2, concerning siting of essential public facilities. The document was designated Hearing on the Merits Exhibit 2.

IV. LEGAL ISSUE AND DISCUSSION

A. LEGAL ISSUE, ABANDONED MATTERS, AND ORDER OF DISCUSSION

The Prehearing Order states the legal issue:

1. *In enacting Tukwila Ordinance Nos. 2287 and 2288, did the City of Tukwila violate RCW 36.70A.020, RCW 36.70A.040, RCW 36.70A.070, RCW 36.70A.100, RCW 36.70A.150 and/or RCW 36.70A.200 by effectively precluding the siting of crisis diversion facilities – an essential public facility – within the City?*

Petitioner acknowledged at the Hearing on the Merits that its challenge to Ordinance No. 2288 was **abandoned**.[13]

Petitioner's arguments in its prehearing brief and at hearing were based on RCW 36.70A.200(1) and (5), the GMA provisions on siting essential public facilities, and on RCW 36.70A.020(6) and (7), the GMA Goals concerning private property and permits. Petitioner also argued that the City's action is inconsistent with its comprehensive plan. RCW 36.70A.040(3) and RCW 36.70A.070(preamble) contain requirements for such consistency.

The legal issue further alleges non-compliance with RCW 36.70A.100 and .150, GMA provisions which require regional coordination. Petitioner has provided no information or argument about any comprehensive plan provision of King County that might have given rise to a duty for the City of Tukwila to coordinate, and Petitioner's briefs make no citations to these sections of the statute. Therefore the issue of noncompliance with RCW 36.70A.100 and .150 is deemed **abandoned**.

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[13] Ordinance No. 2288: Repealing a moratorium on diversion facilities and diversion interim service facilities for the treatment of mentally ill and chemically dependent adults in crisis, which was established by Ordinance No. 2287; repealing Ordinance 2287.

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Thus the Board here addresses the legal issue as follows:

> **1.** *In enacting Tukwila Ordinance Nos. 2287 ~~and 2288~~, did the City of Tukwila violate RCW 36.70A.020(6) and (7), RCW 36.70A.040(3), RCW 36.70A.070 (preamble), ~~RCW 36.70A.100, RCW 36.70A.150~~ and/or RCW 36.70A.200(1) and (5) by effectively precluding the siting of crisis diversion facilities – an essential public facility – within the City?*

The Board addresses the issue in the following order:

- Consistency with the comprehensive plan and the City's process for identifying and siting EPFs – RCW 36.70A.040, .070(preamble), and .200(1).
- Preclusion of siting EPFs – RCW 36.70A.200(5)
- GMA private property and permit goals – RCW 36.70A.020(6) and (7)

Finally, the Board addresses Petitioner's request for a determination of invalidity.

B. APPLICABLE LAW

RCW 36.70A.040 and .070 require consistency: "Each city … shall adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan."[14] "The plan shall be an internally consistent document."[15]

RCW 36.70A.200 Siting of essential public facilities, begins:

> (1) The comprehensive plan of each [city] shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as … state and local correctional facilities,…and in-patient facilities including substance abuse facilities [and] mental health facilities …

In addition to the required identification and siting process, the statute prohibits preclusion of the siting of essential facilities. RCW 36.70A.200(5) states:

> (5)No local comprehensive plan or development regulations may preclude the siting of essential public facilities.

RCW 36.70A.020(6) and (7) are the GMA Goals relied on by Petitioner:

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[14] RCW 36.70A.040(3)
[15] RCW 36.70A.070 (preamble)

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(6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

C. CHALLENGED ACTION and RELATED MATTERS

Tukwila Ordinance No. 2287[16] amends the City's zoning regulations to define "diversion facility" and "diversion interim services facility" and to allow such facilities in an area of the Commercial/Light Industrial (C/LI) zone south of Strander Boulevard, subject to an unclassified use permit.[17] Prior to enactment of Ordinance No. 2287, crisis diversion facilities were not specifically named in any City zoning district and therefore could have been located in eight of Tukwila's manufacturing or commercial zones, subject to an unclassified use permit. "Essential public facilities, except those listed separately in any of the districts established by this title," are allowed as unclassified uses in the Tukwila Urban Center, Commercial Light Industrial District, Light Industrial District, Heavy Industrial District, Manufacturing Industrial Center/Light Industrial District, Industrial Center/Heavy Industrial District, Tukwila Valley South District, and Tukwila South Overlay District.[18]

In September 2009, Downtown Emergency Service Center (DESC), a provider of homeless services, approached the City of Tukwila to inquire about the process for siting crisis diversion facilities at the RiverSide Residences in Tukwila's Manufacturing Industrial Center (MIC) zone. When city planners identified such services as an EPF, the City enacted

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[16] Ordinance 2287 – Defining Diversion Facility and Diversion Interim Services Facility and updating the zoning code and its provisions for such uses.
[17] TMC 18.30.050(8).
[18] TMC 18.28.050(2) – Tukwila Urban Center District
TMC 18.30.050(3) – Commercial Light Industrial District
TMC 18.32.050(5) – Light Industrial District
TMC 18.34.050(5) – Heavy Industrial District
TMC 18.35.050(3) – Manufacturing Industrial Center/Light Industrial District
TMC 18.38.050(5) – Industrial Center/Heavy Industrial District
TMC 18.40.050(4) – Tukwila Valley South District
TMC 18.41.050(3) – Tukwila South Overlay District

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Ordinance No. 2248, a moratorium on applications for crisis diversion facilities anywhere in the City.[19] The City undertook a study process to understand the nature of crisis diversion facilities and to propose development regulations.

DESC filed a Petition for Review with the Board challenging the City's moratorium as precluding the siting of an essential public facility.[20] Nevertheless, DESC requested a settlement extension to allow it to work with the City to resolve the siting question. City staff analyzed King County's locational criteria for the diversion services and assessed the likely fit in various Tukwila zoning districts. DESC and Sleeping Tiger engaged in active advocacy with city staff and officials for use of the RiverSide site.[21]

Subsequently the City enacted Ordinance No. 2277, a moratorium on applications for any change of use for non-industrial uses in the MIC zone, where the RiverSide Residences are located. Again, DESC appealed the Ordinance to this Board,[22] but requested a settlement extension to allow it to work with the City.

On May 17, 2010, the City enacted Ordinance 2287, providing a definition for "diversion facilities" and "diversion interim services facilities" and allowing these EPFs only in a portion of the Commercial/Light Industrial (C/LI) District but not in the MIC zone or at DESC's requested site. DESC sought an extension of time to determine "whether the zoning yields viable sites" for the planned facilities,[23] but soon voluntarily dismissed its appeals, indicating it had located a site in Seattle for the diversion services.[24]

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[19] Ordinance No. 2248: Relating to diversion facilities and diversion interim service facilities for the treatment of mentally ill and chemically-dependent adults in crisis, adopting a six-month moratorium on establishing such uses, and on the acceptance and/or processing of applications related thereto; providing for severability, and declaring an emergency and establishing an effective date.
[20] *DESC I v. City of Tukwila*, GMHB Case No. 09-3-0014 (filed Nov. 13, 2009)
[21] Petitioner's Prehearing Brief, at 6.
[22] *DESC II v City of Tukwila*, GMHB Case No. 10-3-0006 (filed Apr. 23, 2010).
[23] HOM Ex. 1, Fifth Request for Settlement Extension, at 1.
[24] HOM Ex. 1, Motion for Voluntary Dismissal, at 1.

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The Petitioner here is the owner of RiverSide Residences, DESC's preferred site in Tukwila. Petitioner states:

> [T]he preclusive effect of Tukwila's actions, starting with its moratorium and culminating in the enactment of Ordinance No. 2287, has been uncontrovertibly established by DESC's decision to discontinue its efforts to locate the facilities in Tukwila.[25]

The City responds that the moratoriums are no longer before the Board[26] and that the City zoning solution was the result of a thoughtful process which in fact identified an appropriate area of the City where viable sites for crisis diversion facilities may be found.[27]

D. STATEMENT OF FACTS

Sleeping Tiger's RiverSide property is a 118-room hotel/motel property located on Tukwila International Boulevard (Highway 99) in Tukwila's Manufacturing Industrial Center (MIC) zone just south of Boeing Field.[28] The 5.2 acre property was previously franchised as a Red Lion Hotel. The facilities include a lobby, commercial kitchen, dining rooms, meeting rooms, laundry facilities, 4,500 square foot conference center, lawn and patio areas, an exterior swimming pool, and access to the Duwamish River trail.[29]

Starting in 2008, Sleeping Tiger began leasing furnished units on a month-to-month basis to low-income tenants through a master lease with Downtown Emergency Service Center (DESC).[30] DESC is a provider of services to homeless and other distressed persons in King County. Navos, a provider of in-patient psychiatric and drug addiction care, and Pioneer Human Services, whose vocational program runs a food service plant and could provide building renovation and janitorial services, also expressed "enthusiastic" interest in a partnership to locate services at the former Red Lion Hotel. Discussing the advantages of

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[25] Petitioner's Reply, at 6.
[26] City's Prehearing Brief, at 2, fn. 1.
[27] City's Prehearing Brief, passim.
[28] Petitioner's Prehearing Brief at 1, 2 and Ex. 1, aerial view of facilities.
[29] *Id*. The City has not disputed these facts, and they are taken as established.
[30] *Id.*

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the 118-bed facility with kitchen and support services, Navos CEO David Johnson stated in September 2008:[31]

> Eventually, when the County is ready to launch its crisis diversion center, this complex would be ideally located to house that center.

In August 2009, King County issued a request for proposal (RFP) soliciting proposals from service providers to establish crisis diversion facilities.[32] The RFP sought to implement one of the program recommendations of the County's Mental Illness Drug Dependency (MIDD) Action Plan – a plan funded by a special voter-approved sales tax increase. Crisis diversion under the MIDD plan diverts individuals from the criminal justice system by providing "front door" access to needed assessment, stabilization, services and treatment.[33]

King County's RFP called for a Crisis Diversion Facility of 16 beds and a Crisis Diversion Interim Service Facility of 20 beds. Crisis diversion involves stays of 12 to 72 hours, some of which may be police holds.[34] Crisis diversion interim services provide a maximum two-week stay for case management and counseling. Crisis diversion and interim services are not intended to provide long-term housing for this population. However, the 24 hour per day operation includes meal service, nursing services, shower and laundry, psychiatric and chemical dependency evaluation, and transportation arrangements for client appointments and final disposition.[35] Substantial evidence in the record indicates that the RiverSide facility has the necessary beds, plumbing, kitchen, and space for specialized staff and services to readily accommodate the County's crisis diversion and interim diversion needs.[36]

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[31] Petitioner's Ex. 5, Email 9/2/2008 from David Johnson, CEO of Navos, to Amnon Shoenfeld, Director King County Mental Health, Chemical Abuse and Dependency Services Division.
[32] City Ex. 3; Petitioner's Ex. 7, Staff report, at 3.
[33] *Id.* at 5.
[34] *Id*. at 6-7. In a "police hold," the diversion is an alternative to jail; a person who demands to leave the facility will be picked up by the police and taken to jail.
[35] *Id*. at 8.
[36] Renovation would be required to provide nursing stations, security improvements, and general upgrade. The County RFP allowance in the MIDD RFP for one-time costs for building remodeling was $500,000. City's Ex. 3, at 12.

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The parties here agree that crisis diversion facilities and crisis diversion interim facilities are essential public facilities within the definition of RCW 36.70A.200. Essential public facilities include "those facilities that are typically difficult to site," including "state and local correctional facilities…and in-patient facilities including substance abuse facilities [and] mental health facilities." [37] EPFs provide necessary public service, but it is "not necessary that the facilities be publicly owned."[38] Further, the criteria apply to the facilities, and not the operator;[39] thus, Sleeping Tiger has a continuing interest in avoiding preclusion of use of RiverSide Residences for crisis diversion or other EPF uses even though DESC has selected another site for the current MIDD project.

E. DISCUSSION AND ANALYSIS

1. Consistency with Comprehensive Plan provisions for identifying and siting EPFs.

In an early case concerning the expansion of SeaTac Airport, the Board explained the GMA requirement concerning local jurisdiction accommodation of essential public facilities:

> There are two duties imposed by RCW 36.70A.200: a duty to adopt, in the plan, a process for siting essential public facilities (EPFs); and a duty not to preclude the siting of EPFs in a plan or implementing development regulations.[40]

When a jurisdiction's comprehensive plan "includes a process for identifying and siting" EPFs, its development regulations and other actions must be consistent with that process.

Tukwila's Comprehensive Plan contains the necessary process at Goal 15.2.[41] Policy 15.2.2 indicates how EPFs are identified:

> 15.2.2 "Essential public services" are facilities which provide basic public services, provided in one of the following manners: directly by a government agency, by a private entity substantially funded or contracted for by a government agency, or

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[37] RCW 36.70A.200(1)
[38] WAC 365-196-550(1)(b).
[39] WAC 365-196-550(1)(e).
[40] *Port of Seattle v City of Des Moines*, CPSGMHB Case No. 97-3-0014, Final Decision and Order (Aug. 13, 1997), at 7.
[41] HOM Exhibit 2.

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> provided by a private entity subject to public service obligations (i.e., private utility companies which have a franchise or other legal obligation to provide service within a defined service area).

Policy 15.2.3 provides the process for siting:

> 15.2.3 Applications for essential public facilities will be processed through the unclassified use permit process established in the City's development regulations. This process shall assure that such facilities are located where necessary and that they are conditioned as appropriate to mitigate their impacts on the community.

In accordance with that policy, Tukwila's zoning regulations present a coherent program for EPF siting. Certain named EPFs are specifically allowed in designated zones, sometimes as conditional or unclassified uses. For example, hospitals are allowed in the Heavy Industrial District as a conditional use;[42] correctional facilities and secure community transition facilities are allowed in the MIC zone as unclassified uses.[43] Any EPF not specifically named as allowed in a designated zone is permitted as an unclassified use in MIC and any of seven other zones. "Essential public facilities, except those listed separately in any of the districts established by this title," are allowed as unclassified uses in the eight zones.[44] This scheme provides flexibility for project proponents to find appropriate sites for unique services and for the City to appropriately condition applications for previously unidentified EPFs anywhere in these eight non-residential zones.[45]

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[42] TMC 18.34.040(10).
[43] TMC 18.38.050(3), (12).
[44] Unclassified use permits allowed for "Essential public facilities, except those listed separately in any of the districts established by this title" in:
TMC 18.28.050(2) – Tukwila Urban Center District
TMC 18.30.050(3) – Commercial Light Industrial District
TMC 18.32.050(5) – Light Industrial District
TMC 18.34.050(5) – Heavy Industrial District
TMC 18.35.050(3) – Manufacturing Industrial Center/Light Industrial District
TMC 18.38.050(5) – Industrial Center/Heavy Industrial District
TMC 18.40.050(4) – Tukwila Valley South District
TMC 18.41.050(3) – Tukwila South Overlay District
[45] In describing the requirement that a comprehensive plan "include a process for identifying and siting" EPFs, the Board has pointed out: "EPFs are in many cases unique facilities with the location pre-selected by a proponent agency." *Halmo et al v Pierce County,* CPSGMHB Case No. 07-3-0004c, Final Decision and Order (Sep. 28. 2007), at 32.

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Nevertheless, when the City learned of DESC's interest in siting a crisis diversion facility at the RiverSide Residences, instead of applying its unclassified use process for previously-unidentified EPFs, the City enacted a moratorium, allowing it to refuse to accept any unclassified use permit applications for diversion services while it reviewed its development regulations for such facilities. At the end of the extended moratorium, the City established restricted zoning that allowed crisis diversion facilities only in a narrow zone that did not included the RiverSide Residences.

In a similar case several years ago, the Department of Corrections sought to locate a work release program on the Western State Hospital campus in Lakewood in a facility it already owned and where such EPFs were allowed as a conditional use. The City of Lakewood enacted a moratorium, saying the impacts of the proposed use needed further study and mitigation. The City launched a process to assign such EPFs to a different zone. The Board said:

> The City's existing comprehensive plan policies, land use plan designation and implementing development regulations and zoning designations governing the location and siting of a state EPF enable the City to address the concerns the City has raised in the findings of fact. The City has clearly identified areas where EPFs should be located, including the WSH campus. It has plan policies and criteria enumerated in its development regulations, specifically the conditional use permit process, that allow reasonable conditions to be imposed to mitigate likely impacts of such an EPF. The moratorium precludes access to the City's existing EPF procedures.[46]

The Board concluded Lakewood's process was "the equivalent to precluding the EPF."

The City of Tukwila asserts that the validity of its moratoriums on crisis diversion siting is not at issue here.[47] The City points out that the moratoriums – Ordinance Nos. 2248 and 2277 - were challenged by DESC in Case Nos. 09-3-0014 and 10-3-0006. Those challenges have

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[46] *DOC III/IV v City of Lakewood*, CPSGMHB Case No. 05-3-0043c, Final Decision and Order (Feb. 25, 2008), at 15.
[47] City's Prehearing Brief, at 2, fn. 1.

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been withdrawn and the cases dismissed.[48] Sleeping Tiger was not a party to the moratorium cases, and the matter is not before the Board, according to the City.

However, the Board is not being asked to rule here on the validity of the moratoriums. Rather, the Board must decide whether the City's "process for identifying and siting" crisis diversion facilities was consistent with its Comprehensive Plan and compliant with GMA requirements of RCW 36.70A.200(1). On this question, the Board is left with a firm and definite conviction that a mistake has been committed.

Tukwila's Comprehensive Plan 15.2.3 provides: "Applications for essential public facilities will be processed through the unclassified use permit process established in the City's development regulations. This process shall assure that such facilities are located where necessary and that they are conditioned as appropriate to mitigate their impacts on the community."[49] WAC 365-196-550(5)(a) states: "Development regulations governing the siting of essential public facilities must be consistent with and implement the process set forth in the comprehensive plan."

Petitioner's RiverSide Residence property is situated within Tukwila's MIC zone. TMC 18.38.050(5) specifically allows essential public facilities not "listed separately" to be sited in the MIC zone, "subject to the requirements, procedures and conditions established" by Tukwila's unclassified use permit process.

However, instead of reviewing DESC's proposal and allowing its application for crisis diversion facilities through the City's unclassified use permit process, as envisioned by its Comprehensive Plan and required by its development regulations, the City of Tukwila, after a moratorium on applications and an eight-month delay, adopted Ordinance No. 2287. Ordinance 2287 foreclosed the ability of DESC to site the crisis diversion facilities at

[48] HOM Ex. 1, Order of Dismissal.
[49] HOM Ex. 2.

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RiverSide by listing diversion facilities separately and specifically confining their location to the C/LI zone south of Strander Boulevard.

The Board can readily see what would happen if such a process were found to comply with the GMA requirement for identifying and siting EPFs. Any local jurisdiction, upon information that a previously-unidentified essential public facility was likely to locate in its boundaries, could declare a moratorium on project applications and undertake restrictive zoning to ensure that the selected site was no longer available.[50] Such a process would soon undermine the GMA requirement not to preclude the siting of essential public facilities. Broadly applied across the state, the GMA goal of providing services to meet essential public needs would be frustrated and the public would not be well served.

When faced with the variety of tactics adopted by local jurisdictions to avoid accommodating essential public facilities, the Board has sought to understand and apply the GMA requirement not to preclude EPFs. In its first case on this issue, *Children's Alliance v Bellevue*,[51] the Board noted the Legislature's selection of "preclude" as opposed to "prohibit," and utilizing Webster's Dictionary, defined preclude as "to make impossible or impracticable."

In *City of Des Moines v Puget Sound Regional Council*,[52] the Court of Appeals, while acknowledging that the GMA must be strictly construed, expressly endorsed the Board's definition of the anti-preclusion requirement. In that challenge to the SeaTac Airport expansion, the Court ruled that EPF "siting" includes the expansion of existing EPFs:

> This conclusion comports with the fundamental reasoning behind identifying EPFs and giving them special significance under the GMA – the fact that cities are just

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[50] From the Petitioner's perspective: "Even after a proponent of an essential public facility identifies a specific location within a zoning district which permits its siting therein, the City is not required to actually process any land use applications relating to the facility. Rather, the City reserves the right, after receiving notice that a proponent is contemplating the filing of an unclassified use permit, to amend its development regulations in order to prohibit the siting of the facility in question in the particular district." Petitioner's Prehearing Brief, at 11.
[51] CPSGMHB Case No. 95-3-0011, Final Decision and Order (July 25, 1995), at 12.
[52] 98 Wn.App.23, 34-35, 988 P.2d 27 (Nov. 15, 1999) review denied 140 Wn.2d 1027 (June 6, 2000).

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> as likely to oppose the siting of necessary improvements to [existing] public facilities as they are to siting of new EPFs.[53]

The Court also ruled that EPF "siting" required cities to allow the necessary off-site construction and operation support activities:

> The legislative purpose of RCW 36.70A.200(2) [now .200(5)] would be defeated if local governments could prevent the construction and operation of an EPF.[54]

Thus the Court endorsed the Board's definition of preclusion and its application of the GMA provisions to achieve the legislative purpose of effective siting of EPFs.

In the Board's cases, local government strategies for making EPF siting impracticable have taken the form of restrictive zoning (*Children's Alliance*),[55] the imposition of unreasonable requirements (*Hapsmith v City of Auburn),*[56] comprehensive plan policies directing opposition to a regional decision (*Port of Seattle v City of Des Moines),*[57] limiting sites to zones where available land is scarce and highly contaminated *(DOC/DSHS v Tacoma)*,[58] imposing criteria that second-guess a siting decision made by a regional or state entity (*King County I v. Snohomish County),*[59] adopting standards inconsistent with state and federal regulations *(Cascade Bicycle Club v City of Lake City)*,[60] and causing unpredictable delay through successive moratoriums (*DOC III/IV v City of Lakewood).*[61]

Plainly, a jurisdiction renders the siting of an EPF impracticable when, in response to an inquiry about a permit for a particular location allowed under its current zoning, the jurisdiction imposes a moratorium on permit applications while it amends its zoning to restrict such EPFs to a location other that the proponent's chosen site. The Board is left with

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[53] 98 Wn.App. at 33.
[54] 98 Wn.App. at 34.
[55] CPSGMHB Case No. 95-3-0011, Final Decision and Order (July 25, 1995), at 12.
[56] CPSGMHB Case No. 95-3-0075c, Final Decision and Order (May 10, 1996), at 31-32.
[57] CPSGMHB Case No. 97-3-0014, Final Decision and Order (Aug. 13, 1997), at 5.
[58] CPSGMHB Case No. 00-3-0007, Final Decision and Order (Nov. 20, 2000), at 8-9.
[59] CPSGMHB Case No. 03-3-0011, Final Decision and Order (Oct. 13, 2003), at 14.
[60] CPSGMHB Case No. 07-3-0010c, Final Decision and Order (July 23, 2007), at 28.
[61] CPSGMHB Case No. 05-3-0043c, Final Decision and Order (Feb.25, 2008), at 15.

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a firm and definite conviction that such a process does not comply with the GMA mandate of "a process for identifying and siting" EPFs.

***Conclusion*.** The Board finds and concludes that Tukwila's adoption of Ordinance No. 2287 was **clearly erroneous.** The Board concludes that Petitioner has carried its burden in demonstrating the City's action was **inconsistent** with its Comprehensive Plan policies, and **did not comply** with the RCW 36.70A.200(1) requirement of "a process for identifying and siting" EPFs.

2. Preclusion of Crisis Diversion Facility Siting through Restrictive Zoning

Sleeping Tiger contends that the restrictive zoning adopted by the City of Tukwila precluded siting the proposed crisis diversion facility in violation of RCW 36.70A.200(5):

> (5)No local comprehensive plan or development regulations may preclude the siting of essential public facilities.

Sleeping Tiger asserts that the City deliberately sought to preclude the crisis diversion facility because it believes it has already taken its fair share of regional human services.[62] The City objects that there is no foundation in the record for these allegations of bias.[63] The Board notes it is well-settled that a jurisdiction cannot reject siting of an essential public facility on the grounds that other jurisdictions have not taken an equitable share of such facilities.[64] However, the Board assumes good faith on the part of the City and disregards this portion of Petitioner's brief.[65]

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[62] Petitioner's Prehearing Brief, at 15-16.
[63] City's Prehearing Brief, at 9.
[64] See, e.g., *Hapsmith I*, CPSGMHB Case No. 95-3-0075c, Final Decision and Order (May 10, 1996); *DOC/DSHS*, CPSGMHB Case No. 00-3-0007, Final Decision and Order (Nov. 20, 2000), at 12.
[65] See *King County v Snohomish County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order (Oct. 13, 2003), at 12-13: "Every party recounted the history and relative merits of a certain wastewater treatment project, characterizing the motivations, perceptions, and behaviors underlying inter-governmental communication, coordination, and cooperation, or alleged lack thereof. … At the end of the day, the only question before the Board is a very simple one --- does Snohomish County's process for reviewing EPF permits, as adopted in Ordinance No. 03-006, comply with the Goals and Requirements of the Growth Management Act?"

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The City counters that the only relevant question for the Board is whether the designated zone – the Commercial Light Industrial District south of Strander Boulevard – provides reasonable opportunities for siting diversion facilities.[66] The City points out that the area has convenient access to freeways, arterials and transit routes, is isolated from residential zones and commercial distractions, and contains some commercial/industrial properties for sale or lease.[67] The City states that the renovation allowance in the King County budget for the project would be sufficient to retrofit a warehouse or office building in the designated district for a crisis diversion facility.[68]

The City makes three arguments in support of the adopted C/LI zoning:

- The C/LI area south of Strander Boulevard meets the County's locational criteria for the services;
- The MIC zone must be reserved for manufacturing/industrial uses; and
- There are sites available in the designated C/LI area for crisis diversion facilities.

Ample evidence in the record supports the City's first assertion: the designated C/LI area meets the County's locational criteria.[69] Tukwila City planners did a thorough review of various zoning districts to identify areas of the City that might meet King County's locational criteria for the diversion services consistent with other City policies.[70] Each area was judged against the criteria of access to freeways, nearby metro bus routes, buildings over 7,200 square feet and overall access to the site.[71] The City asserts:

> Petitioner cannot meet its burden of proof to demonstrate that the City's development regulation effectively precludes the siting of Crisis Diversion

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[66] City's Prehearing Brief, at 9.
[67] City Prehearing Brief, at 21-22; Ex. 11 and Supp. Ex. 3
[68] The Board finds no facts in the record to support the adequacy or inadequacy of the renovation allowance. The Board assumes that a renovated hotel, with beds, bathrooms, kitchens and other residential amenities in place, would be more economical and more quickly available for the required use than a warehouse or office building.
[69] City Ex. 2, at 0617-0635.
[70] King County did not participate in Tukwila's public process except to clarify the transit access needed to support the facilities. City Prehearing Brief, at 25.
[71] City's Prehearing Brief, at 15.

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> Program facilities when all of the regional siting criteria are met or exceeded by the City's decision.[72]

The Board agrees that the County's locational criteria are met in the limited area of the C/LI zone, but the Board still must consider the practicability of siting the facilities in that area.

Second, the City argues that crisis diversion does not belong in the manufacturing center. Sleeping Tiger points out that the MIC district, where RiverSide Residences are located, meets the County's locational criteria, according to the staff report.[73] However, the City asserts that Tukwila's MIC zone has been designated by King County as one of the County's four manufacturing/industrial centers. The City states that King County Countywide Planning Policies require local governments to adopt zoning that protects the viability of these centers for manufacturing use.[74] Tukwila points to its Comprehensive Plan Policy 11.1.5 which requires the City to limit non-manufacturing uses in the MIC zone except those uses that directly support manufacturing activity or provide services to employees.[75]

The record before the Board provides substantial evidence that the City's MIC zone allows EPFs which do not serve or support manufacturing businesses or their employees. In particular, the MIC zone allows as unclassified uses correctional facilities, secure community transition facilities and any EPFs not specifically assigned to a different zone.[76] The City provided no evidence that a 16-bed crisis diversion facility and 20-bed interim services in the zone would in any way interfere with manufacturing activities. Sleeping Tiger showed that its property is fenced, with on-site parking and ability to contain and isolate its activities to avoid interference with neighboring industries.[77] Converting the former hotel for

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[72] City Prehearing Brief, at 25.
[73] Hearing on the Merits; see City Ex. 2, at 0627-8
[74] City Ex. 2, at 0976-0988
[75] City's Prehearing Brief at 19, Ex. 2, at 0628.
[76] TMC 18.38.050(3) correctional facilities, (5) unspecified EPFs, and (12) secure community transition facilities.
[77] Petitioner's Prehearing Brief, Ex. 1.

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crisis diversion use would not displace manufacturing. Thus the Board finds it can give this argument little weight.

Third, the City contends that its restrictive zoning for the C/LI zone south of Strander Boulevard does not preclude the siting of crisis diversion facilities because there are available sites in the designated area at lease rates within the RFP limits.[78] In *DOC/DSHS v City of Tacoma,*[79] the Board considered a challenge to Tacoma's restrictive zoning for the siting of work release facilities, where the City proposed to allow these facilities only in one limited zone. The Board found that limiting work release facilities to the M-3 zone "where availability of non-developed, non-contaminated sites is problematic, effectively precludes the siting of new work release facilities."[80] On remand, the City adopted a new ordinance which allowed work release facilities in five zoning districts. When DOC protested that there still was no suitable land in these zones, the City prepared an inventory identifying 289 parcels where the facilities could be permitted, with 79 of these parcels vacant. DOC prepared its own inventory, removing parcels unsuitable by DOC's more restrictive criteria, but still yielding 40 parcels. On this record, the Board ruled that DOC was not precluded from siting work release facilities in the designated zones.[81]

What are the facts in the present record? Maps presented in the record show that the C/LI zone south of Strander Boulevard consists of at least 40 parcels. The City provided documentation of 7 properties available for purchase or lease.[82] The record contains no information as to which, if any, of these individual properties is a viable site for crisis diversion services. It appears that the buildings in the area – including the 7 properties on the market - are industrial/warehouse buildings that would need to be retrofitted to meet the

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[78] City's Prehearing Brief, at 24.
[79] CPSGMHB Case No. 00-3-0007, Final Decision and Order (Nov. 20, 2000)
[80] *Id.* at 8-9.
[81] CPSGMHB Case No. 00-3-0007, Finding of Compliance (May 30, 2001) at 4-5.
[82] City Prehearing Brief, at 24, Ex. 11.

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residential nature of the treatment facilities required by the RFP.[83] We have only speculative evidence whether any of them could have been purchased/leased and rebuilt for DESC's purposes at a reasonable price or on the County's timeline. HOM Exhibit 1 demonstrates that DESC chose a site in Seattle for its crisis diversion facility after "evaluating zoning amendments to the Tukwila City Code related to crisis diversion facilities" [Ordinance 2287] and "investigat[ing] whether the zoning yields viable sites" for the facilities.[84]

Tukwila bases its argument that crisis diversion services may reasonably be located in the designated area on the availability of 7 properties for sale or lease. The Board is not persuaded. The Board finds a stark contrast between the facts in *DOC/DSHS,* where 40 viable parcels were identified after professional analysis, and the facts in the case before us, with 7 properties identified as on the market. There is, of course, no "bright-line" number of possible parcels that constitute compliance with the GMA mandate not to preclude EPFs. The salient fact in the record is that DESC, after reviewing Tukwila's restrictive zoning for a scant 8 weeks, located a site in Seattle and dismissed its challenge to Tukwila's moratorium.[85] While the Board must defer to the City, the Board must find credible evidence in the record to support that deference. As noted in the Board's cases and Court of Appeals decision *City of Des Moines* cited above, the Board defines "preclude" as "impracticable." Here the City's restrictive zoning is simply not supported by substantial evidence indicating that siting a crisis diversion facility in the limited area is practicable. The Board is left with a firm and definite conviction that a mistake has been committed. The City's limited zoning rendered siting the facility impracticable and precludes siting an EPF in violation of RCW 36.70A.200(5).

***Conclusion*.** The Board finds and concludes that substantial evidence in the record supports Petitioner's contention that Ordinance 2287 precluded DESC from locating crisis

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[83] Petitioner cites to its Ex. 11 and 12 and states: "There are simply no buildings in this area, regardless of whether they may be available for lease, which can realistically accommodate these special purpose facilities." Petitioner's Prehearing Brief, at 15.
[84] HOM Ex. 1, Fifth Request for Settlement Extension
[85] HOM Ex. 1, Motion for Voluntary Dismissal.

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diversion facilities on its chosen site or within the City of Tukwila. The Board concludes that Petitioner has carried its burden in demonstrating the City **failed to comply** with RCW 36.70A.200(5) by adopting restrictive zoning that precluded the siting of crisis diversion facilities sought as part of King County's MIDD program.

3. Compliance with GMA Planning Goals 6 and 7

RCW 36.70A.020(6) is the GMA property rights goal:

> (6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

Sleeping Tiger argues that the City's conduct was an arbitrary and discriminatory attack on its property rights:

> Sleeping Tiger has unquestionably demonstrated in this Brief and accompanying Exhibits that the City of Tukwila, in its efforts to at all costs prevent the siting of crisis diversion facilities at RiverSide Residences, negatively and unfairly targeted Sleeping Tiger's property and DESC's ability to file an application for an unclassified use permit. Such conduct obviously rose above the significance of the arbitrary and discriminatory action against which the GMA was intended to provide protection. These actions, it should be emphasized, were not undertaken innocently or without an appreciation of their significance; rather, they were completed after both DESC and Sleeping Tiger had communicated that DESC, as the proponent of an essential public facility, had selected RiverSide as the site for the facilities.[86]

RCW 36.70A.020(6), or Goal 6 of the GMA, states that "property rights of landowners shall be protected from arbitrary and discriminatory actions." In order to prevail in a challenge based on Goal 6, a petitioner must prove that the action taken by a local jurisdiction is arbitrary and discriminatory.[87] An arbitrary decision is one that is not merely an error in judgment but is "baseless" and "in disregard of the facts and circumstances."[88] Given the

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[86] Petitioner's Prehearing Brief, at 17.
[87] *Cave/Cowan v City of Renton*, CPSGMHB Case No 07-3-0012, Final Decision and Order (July 30, 2007), at 16-17; *Shulman v. City of Bellevue*, CPSGMHB Case No. 95-3-0076, Final Decision and Order (May 13, 1996) at 12*; Keesling v. King County,* CPSGMHB Case No. 05-3-0001, Final Decision and Order (July 5, 2005) at 28-33.
[88] *Keesling, supra*, at 32.

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public process framework for enactment of Ordinance 2287, the staff analysis of various zoning options in relation to the County's locational criteria, and the City Council's review of several options, the Board cannot conclude that the City's action was unreasoned or taken without regard and consideration of the facts and circumstances.

The Board recognizes that some aspects of the City's conduct here might appear discriminatory. It seems unusual for a local government to go to such lengths to avoid the preferred location of a service provider for an EPF that apparently generated no community or neighborhood opposition. Nonetheless, the Board looks at the broad, objective analysis in Tukwila's staff report and concludes that the adoption of the restrictive zoning selected in the Ordinance was not arbitrary. The Board **concludes** that Petitioner failed to carry its burden to overcome the presumption of validity with respect to consideration of GMA Goal 6 – Property Rights.

RCW 36.70A.020(7) is the GMA goal concerning permits:

> (7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

Petitioner asserts that DESC and Sleeping Tiger had the right to have DESC's application for an unclassified use permit for crisis diversion facilities in the MIC zone processed in accordance with the policies contained in Tukwila's Comprehensive Plan governing essential public facilities:

> It was grossly unfair for Tukwila to circumvent the permit process provided in its Comprehensive Plan and zoning regulations … to prevent DESC's siting of these facilities at the RiverSide property. Such actions were certainly incompatible with the goals of predictability and fairness required by the GMA.[89]

GMA Goal 7 emphasizes the importance of certainty in land use regulations. Any development process must be made clear for the developer from the outset, whether it be private citizens, other government agencies, non-profit or commercial ventures. The Board

[89] Petitioner's Prehearing Brief, at 18.

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has long recognized the particular applicability for GMA Goal 7 to EPF siting needs. If an EPF permit application is subject to arbitrary conditions or unpredictable processes, the facility is essentially precluded:

> The EPF permit process may be found to be so unfair, untimely and unpredictable as to substantively violate RCW 36.70A.020(7).[90]
>
> As a matter of necessity, determining whether an adopted regulation is preclusive brings in aspects of Goal 7, relating to processing permits in a timely, fair manner to ensure predictability.[91]

Where EPF siting is at issue, the Board has previously ruled that imposition of moratoriums followed by enactment of changed zoning and regulations frustrates the goal of certainty in permit applications. As the Board stated in *DOC III/IV v Lakewood*: "[T]he *moratorium causes an unpredictable delay* in the siting of the state EPF which is the equivalent to precluding the EPF."[92] The Board further noted: "Siting the facility in *an alternative zoning district would cause delays* related to finding and acquiring a site and physically establishing a facility."[93]

In the record before the Board in the present case, when the City learned of DESC's interest in siting crisis diversion services at the RiverSide Residences, the City launched an ad hoc process starting with moratoriums and resulting in changed zoning regulations. There was no way for DESC as potential applicant or Sleeping Tiger as property owner to know what the process would be, how long it would take, or what requirements or restrictions might ultimately be imposed. In connection with EPF siting, such action by a City "results in an unfair and unpredictable permitting process contrary to RCW 36.70A.020(7)"[94] and is

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[90] *King County v. Snohomish County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order (Oct. 13, 2003), at 5-6.
[91] *Cascade Bicycle Club v City of Lake City*, CPSGMHB Case No. 07-3-0010c, Final Decision and Order (July 23, 2007), at 13.
[92] CPSGMHB Case No. 05-3-0043c, Final Decision and Order (Feb. 25, 2008), at 15 (emphasis supplied).
[93] *Id*. at 18 (emphasis supplied).
[94] *Cascade Bicycle Club v City of Lake City*, CPSGMHB Case No. 07-3-0010c, Final Decision and Order (July 23, 2007), at 28.

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clearly erroneous. The Board concludes that the City's action was **not guided by** and **substantially interferes** with GMA Goal 7 - Permits.

***Conclusion*.** The Board finds and concludes that Sleeping Tiger has not carried its burden of demonstrating non-compliance with GMA Goal 6 - Property rights. However, the Petitioner has carried its burden of showing that the City's action was **not guided by** and, in fact, **substantially interferes** with GMA Goal 7 – Permits.

4. Invalidity

RCW 36.70A.302(1) empowers the Board to invalidate a development regulation which is found to be inconsistent with the GMA, where the Board "includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter."

The Board has found that the City of Tukwila's adoption of Ordinance No. 2287 does not comply with the essential public facilities requirements of the Act, specifically, RCW 36.70A.200(1) and (5). The noncompliant Ordinance is remanded to the City in this Order. Since the Board's finding of noncompliance relates to the nature of the process for siting the EPF, the Board's consideration of invalidity focuses on Goal 7, which provides:

> Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.[95]

In the Board's discussion and analysis, the Board determined that the City's failure to act consistently with the process for siting EPFs set forth in its Comprehensive Plan, followed by its subsequent revisions to its development regulations, resulted in a permit process that

[95] RCW 36.70A.020(7).

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is not timely, fair or predictable. The continued validity of Ordinance 2287 would continue to frustrate timeliness and predictability. [96]

Based upon the findings of fact and the Board's finding of noncompliance with RCW 36.70A.200, the Board concludes that Ordinance No. 2287 **substantially interferes** with the fulfillment of Goal 7. The Board hereby enters a **determination of invalidity** for City of Tukwila Ordinance 2287.

Conclusions re: Invalidity: The Board has found that the City of Tukwila's adoption of Ordinance 2287 is **noncompliant** with RCW 36.70A.200. The Board finds and concludes that the continued validity of Ordinance 2287 would substantially interfere with the fulfillment of GMA Goal 7 – RCW 36.70A.020(7). Therefore the Board enters a **determination of invalidity** for Ordinance 2287.

V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board orders and case law, having considered the arguments of the parties and having deliberated on the matter, the Board ORDERS:

1) Petitioner Sleeping Tiger has failed to carry the burden of proof in demonstrating that the City of Tukwila's adoption of Ordinance No. 2287 was not guided by RCW 36.70A,020(6) Property rights. Petitioner's allegations pertaining to GMA Planning Goal 6 are **dismissed.**
2) Petitioner Sleeping Tiger **abandoned** its challenge to Ordinance No. 2288 and its allegations of non-compliance with RCW 36.70A.100 and .150. These allegations are **dismissed.**
3) The City of Tukwila's adoption of Ordinance No. 2287 was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.200(1) and (5)

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[96] Already three Petitions for Review have been filed with the Board by either the project proponent or the property owner since the proponent's first inquiry to the City about permit application in 2009. The first moratorium was passed September 8, 2009.

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concerning siting and accommodating essential public facilities and with the consistency requirements of RCW 36.70A.040(3) and RCW 36.70A.070 (preamble) and **was not guided by** GMA Goal 7 Permits – RCW 36.70A.020(7).

4) The Board **remands** Ordinance No. 2287 to the City of Tukwila to take legislative action to comply with the requirements of the GMA as set forth in this Order.

5) The continued validity of Ordinance 2287 substantially interferes with the fulfillment of GMA Goal 7 - RCW 36.70A.020(7). Therefore the Board enters a **determination of invalidity** with respect to Ordinance No. 2287.

6) The Board sets the following schedule for the City's compliance:

Item	Date Due
Compliance Due	May 10, 2011
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	May 24, 2011
Objections to a Finding of Compliance	June 7, 2011
Response to Objections	June 14, 2011
Compliance Hearing – Location to be determined	June 21, 2011 10:00 a.m.

DATED this 4th day of January 2011.

_____
Margaret A. Pageler, Board Member

_____
David A. Earling, Board Member

_____
Nina Carter, Board Member

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Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.[97]

[97] Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

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